

August 5, 2013

*Via Electronic Filing and E-Mail*

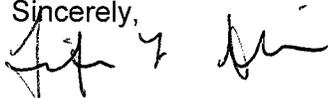
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

RE: Frank Rezzetano v. Duquesne Light Company  
Docket No. C-2012-2337862

Dear Secretary Chiavetta:

Duquesne Light Company's Reply Exceptions enclosed for filing. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Jennifer L. Allison  
Attorney for Duquesne Light Company

Enclosure

cc: Frank Rezzetano (with enclosure)  
Office of Special Assistants (OSA), via email (with enclosure)

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

FRANK REZZETANO,	)	
	)	
vs.	)	Docket No. C-2012-2337862
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent.	)	

**RESPONDENT DUQUESNE LIGHT COMPANY'S REPLY EXCEPTIONS**

TO THE HONORABLE COMMISSION:

AND NOW comes Respondent, Duquesne Light Company, by and through its attorneys, Tucker Arensberg, P.C., and files the following Replies to Complainant's Exceptions to the Initial Decision:

**I. Procedural History**

On December 6, 2012, Frank Rezzetano, filed a Complaint against Duquesne Light Company. Complainant alleged there were incorrect charges on his electric bill from Respondent. On December 21, 2012, Duquesne Light Company filed an Answer denying that there were incorrect charges on Complainant's bill.

On February 14, 2013, a Telephonic Hearing Notice was sent by the Commission to the parties scheduling an initial telephonic hearing for Wednesday, March 20, 2013 at 10:00 a m. at Piatt Place, Suite 220, 301 5th Avenue, Pittsburgh, PA 15222. The February 14, 2013 Telephonic Hearing Notice informed the parties of the place, day, date and time of the hearing, and was mailed to Complainant at the address he provided on his Complaint. On February 19, 2013, a Prehearing Order was issued to all parties which provided in part that, if Complainant

was not available when contacted by the Administrative Law Judge, his case would be dismissed.

On March 19, 2013, upon the request of Complainant, Administrative Law Judge Jeffrey A. Watson issued an Interim Order Granting a Continuance and rescheduling the matter as an in-person hearing. On March 21, 2013, a Hearing Cancellation/Reschedule Notice was provided to the parties informing the parties that the in-person hearing was rescheduled for Wednesday, June 5, 2013 at 10:00 a.m. at Piatt Place.

Complainant did not appear at the time the matter was convened at 10:00 a.m. on June 5, 2013, and he was not able to be reached by telephone. ALJ Watson provided Complainant with additional time to appear at the hearing or contact the Commission to explain his absence. At 10:35 a.m., after an additional attempt to contact Complainant, Respondent moved for the dismissal of the Formal Complaint for Complainant's failure to appear and prosecute the Complaint.

An Initial Decision was issued on June 27, 2013, dismissing the complaint with prejudice for Complainant's failure to prosecute the Complaint.

## **II. Argument**

*A. The Exceptions do not allege any error in the Initial Decision's findings of fact or conclusions of law.*

The Commission should sustain the dismissal of the complaint and adopt the Initial Decision, as it is free of any error. The Complainant's Exceptions do not allege any error in ALJ Watson's findings of fact or conclusions of law. In fact, the Exceptions state, "Your Honor, the only reason I am filing exceptions is because the letter says so. I could not file exceptions against you. Everything you did was right." Exceptions at 2. The letter that Complainant refers to is apparently the Secretarial Letter that enclosed the copy of the Initial Decision. This letter contained instructions for filing Exceptions "if you do not agree with any part of [the Initial

Decision].” 6/27/13 Secretarial Letter. Complainant’s Exceptions fail to identify any part of the Initial Decision that he disagrees with.

The reason for Complainant’s failure to appear at the hearing was because he neglected to write the correct date on his calendar. Exceptions at 1. Significantly, he does not dispute that he had notice of the correct time, date, and place of the hearing.

Complainant was warned of the consequences of failing to appear at the hearing. The Hearing Notice emphasized that “You may lose this, case if you do not take part in this hearing and present evidence on the issues raised.” 2/19/13 Hearing Notice. Complainant was afforded administrative due process by the Commission’s provision of timely notice of the hearing of the Complaint and the opportunity to be heard. *Schneider v. PA PUC*, 479 A.2d 10 (Pa. Cmwlth. Ct. 1984).

When a party, despite notice, fails to appear at a hearing, 66 Pa. C.S. §332(f) provides, in part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat....

ALJ Watson correctly ruled, “Because Mr. Rezzetano failed to appear and participate in the scheduled hearing, personally or by telephone, his Complaint must be dismissed with prejudice. See *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).” ID at 4.

Complainant’s failure to appear at the hearing was, by his own admission, due to his own negligence. He stated, “I missed the day of the hearing June 5<sup>th</sup> because in my haste, I wrote on my calendar June 25<sup>th</sup>.” Exceptions at 1. A party has a duty to appear at an administrative hearing under Pennsylvania law, as “a party’s own negligence is not sufficient ‘good cause’ as a matter of law for failing to appear at a Referee’s hearing.” *Eat’N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494

(Pa.CmwltH .2008). Complainant is familiar with the legal process, and the hearing date was continued to June 5, 2013 at Complainant's request. Respondent was prepared for the originally scheduled hearing on March 20, 2013, and appeared with proposed exhibits and a proposed witness at the June 5, 2013 hearing.

In limited situations when a Complainant has demonstrated a clear intent and attempt to be heard, the Commission has held that it is appropriate to dismiss a Complaint without prejudice to protect a Complainant's due process rights. *Windell C. Wiggins v. PECO Energy Company*, 2011 WL 6008998 (Pa.P.U.C.). The instant formal complaint is distinguishable from *Wiggins*. Mr. Rezzetano has already explained to the Commission that he failed to appear at the hearing because he wrote down the wrong date on his calendar. Complainant admits that he has been afforded due process rights, stating "[ALJ Watson] went way beyond the call of fairness for me" and "I am writing this to let you know, even if you rule against me, you have earned that right." Exceptions at 2 and 3.

*B. The Exceptions inappropriately attempt to introduce new evidence after the close of the record.*

The Exceptions contain allegations that Respondent has improperly refused to provide him with electric service, discussions of the lawsuit the Complainant is pursuing against Respondent, and proposed exhibits. Respondent respectfully submits that the submission of this information is inappropriate. Section 5.43.1 of the Commission's regulations, 52 Pa. Code §5.431, provides that after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. The allegations raised by Complainant and the documents that are referenced and provided in the Exceptions were not presented at the June 5, 2013 hearing and were not identified at any time prior to the ALJ Watson's Order closing the record on June 18, 2013.

Complainant was provided with due process rights and was afforded the opportunity to appear at the scheduled hearing and present evidence. He failed to do so, and the record has now closed.

At no time before the issuance of the Initial Decision or the filing of Exceptions did Complainant file a petition to reopen the record to introduce any of the allegations that are contained in the Exceptions.

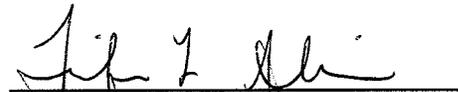
III. Conclusion

Complainant's exceptions contain no allegations that the Initial Decision contained any errors. Instead, he praised ALJ Watson and admitted that he failed to appear at the hearing because he wrote the wrong date on his calendar. The Exceptions contain factual allegations and proposed exhibits that should not be considered because the record has closed.

WHEREFORE, Respondent, Duquesne Light Company, respectfully requests that the Honorable Commission deny Complainant's Exceptions.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Jennifer L. Allison, Esquire  
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(412) 594-5527

Counsel for Respondent

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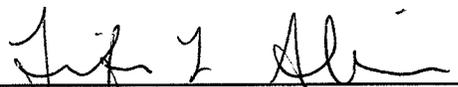
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participant listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Frank Rezzetano  
P.O. Box 10285  
Pittsburgh, PA 15232

Dated this 5<sup>th</sup> day of August, 2013

BY:



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